

Hearing Date: September 21, 2022 at 9:30 a.m. (AST)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR
PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO
RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 03283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR
PUERTO RICO,

as representative of

THE EMPLOYEES RETIREMENT
SYSTEM OF THE COMMONWEALTH OF
PUERTO RICO,

Debtor.

PROMESA

Title III

No. 17 BK 03566-LTS

**UBS FINANCIAL SERVICES INCORPORATED OF PUERTO RICO'S RESPONSE TO
THE MOTION TO STAY CONSIDERATION OF UBS FINANCIAL SERVICES
INCORPORATED OF PUERTO RICO'S MOTION TO ENFORCE THE PLAN OF
ADJUSTMENT AND FOR RELATED INJUNCTIVE RELIEF**

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481); (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808); (iv) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17-BK-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (Bankruptcy Case No. 19-05523 (LTS)) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as bankruptcy case numbers due to software limitations).

UBS Financial Services Incorporated of Puerto Rico (“UBS”), by and through the undersigned counsel, hereby responds to the Motion to Stay Consideration of UBS Financial Services Incorporated of Puerto Rico’s Motion to Enforce the Plan of Adjustment and For Related Injunctive Relief, filed on August 10, 2022 (the “Motion to Stay”) (Dkt. 21808). In opposition to the Motion to Stay, UBS states as follows:

RESPONSE

1. On July 28, 2022, UBS filed a motion to enforce the Court’s January 18, 2022 Plan of Adjustment, requesting that the Court enjoin certain litigants from pursuing claims in Puerto Rico Commonwealth Court that otherwise belong to the Avoidance Actions Trust.² (Dkt. 21651 (the “Motion to Enforce”)) As UBS explained, the Avoidance Actions Trustee is pursuing those same claims in the Underwriter Adversary Action in this Court. As such, UBS seeks a ruling preventing the Commonwealth Court litigants from interfering with the Avoidance Actions Trustee’s rights. Formal responses to UBS’s Motion to Enforce are due on September 14, 2022, and the Court is scheduled to consider the motion at the Omnibus Hearing to be held on September 21, 2022.

2. Six individual plaintiffs in the Commonwealth Action are seeking to stay resolution of UBS’s Motion to Enforce.³ They assert that the Motion to Enforce is “premature” because it may become moot. That argument can be presented in opposition to the Motion to Enforce and is not grounds to stay consideration of the motion.

² All undefined capitalized terms have the same meaning set forth in UBS’s Motion to Enforce.

³ Juanita Sosa Perez is also an individual plaintiff in the Commonwealth Action; however, she is not listed as participating in the Motion to Stay. For avoidance of doubt, UBS’s Motion to Enforce seeks a ruling against all seven individual plaintiffs in the Commonwealth Action.

3. In any event, none of the potential scenarios cited in the Motion to Stay will moot UBS's Motion To Enforce. Specifically, the ERS Beneficiaries point to the fact that the Underwriter Adversary Action is currently stayed and that the Avoidance Actions Trustee is continuing to evaluate its claims. (Motion to Stay ¶ 4) Thus, they speculate that the Avoidance Actions Trustee may choose not to pursue the claims that overlap with their claims. (*Id.*) They also surmise that UBS may succeed in having the claims dismissed on the merits. (*Id.* ¶ 5)

4. But neither of these scenarios would change the fact that the claims belong to the Avoidance Actions Trust and not to the ERS Beneficiaries. (*See* Plan § 1.108, 78.3 & Ex. B) The Plan gives the Avoidance Actions Trustee the "rights, power and duties" "to investigate, prosecute, settle and/or ***abandon***" the claims. (*Id.* § 78.6) No provision of the Plan states that the claims would revert to the defunct ERS or to its former beneficiaries should the Avoidance Actions Trustee choose not to pursue them or were the Court to dismiss the claims on the pleadings.

5. Indeed, the strategic decisions regarding which claims are worth pursuing and which claims should be abandoned are important to maximizing the returns for the trust. Those decisions are exclusively entrusted to the Avoidance Actions Trustee and its counsel. The ERS Beneficiaries' attempt to interfere with the Avoidance Actions Trustee's decision-making should be rejected.

6. In short, the concerns UBS raises in its Motion to Enforce are ripe, and the ERS Beneficiaries have cited no reason for this Court to delay consideration of those issues.

7. Furthermore, the position of the Avoidance Actions Trustee will be disclosed by the time of the hearing on UBS's motion. UBS understands that the Avoidance Action Trustee will file a response to the Motion to Enforce on or before the return date -- September 14, 2022.

Thus, all of the relevant parties will have presented their positions to the Court before the September 21 hearing.

8. For all of the foregoing reasons, UBS respectfully requests that the Honorable Court deny the Motion to Stay.

Respectfully Submitted:

In San Juan, Puerto Rico, this 6th day of September, 2022.

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